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ALEXANDER L. STEVAS

No. 82-1910

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ANCHOR MOTOR FREIGHT, INC.,
Petitioner,

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL UNION NO. 377, et al.,
Respondents.

Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Sixth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

May an employer that has secured injunctive relief, and commenced and prosecuted contempt charges against a union defendant alleged to have violated the injunction, relitigate factual issues raised and determined in the course of the contempt proceedings in a subsequent 301 action against the union for damages for breach of contract?

TABLE OF CONTENTS

	Page
Question Presented for Review	i
Table of Authorities	iii
Counter-Statement of the Case	1
Reasons for Denying the Writ	8
I. The Holding Of The Court Below Is Consistent With Well Settled Supreme Court Precedent And Does Not Present Any Novel Or Significant Questions That Merit Review By This Court.	8
Conclusion	13
Certificate of Service	13

TABLE OF AUTHORITIES

Cases:

Allen v. McCurry, 449 U.S. 90 (1980)	8,9
Commissioner of Internal Revenue v. Sunnen, 333 U.S. 591 (1948)	8
Cromwell v. County of Sac, 94 U.S. 351 (1876)	8,9
Federated Department Stores, Inc. v. Moitie, 452 U.S. 394 (1981)	9,11
Parklane Hosiery Co., Inc. v. Shore, 439 U.S. 322 (1979)	9,11
Sea-Land Services v. Gaudet, 414 U.S. 573 (1974)	8

Southern Pacific Railroad Co. v. United States, 168 U.S. 1 (1897) 8,9

State of Arizona v. State of California, — U.S. —, 75

State of Montana v. United States, 440 U.S. 147 (1979) . 8,9

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BRIEF FOR RESPONDENT IN OPPOSITION

Respondent, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local Union No. 377, hereby files its opposition to granting the writ of certiorari in the above-captioned case.

The opinions below, the basis of this Court's jurisdiction, and the statutory provisions involved are set out at pages 2 and 3 of the Petition.

COUNTER-STATEMENT OF THE CASE

In January of 1981, Petitioner Anchor Motor Freight commenced this action in the United States District Court for the Northern District of Ohio. Asserting jurisdiction under Section

301 of the Labor Management Relations Act, Anchor alleged that Respondent Teamsters Local Union No. 377 breached the collective bargaining agreement between the parties.

The claimed contractual violation arose out of a wildcat strike at Anchor's Lordstown facility between June 10, 1979 and June 25, 1979. Anchor complained that Respondent Union breached the collective bargaining agreement by engaging in a wildcat strike and by failing to honor its contractual promise to attempt to end unauthorized work stoppages. The Complaint sought damages from Respondent Union for the alleged breach of contract.

Respondent Union, by its Answer, denied the claimed breach of contract.[1] The Answer also asserted affirmatively that Anchor's claims were barred by the doctrines of res judicata and collateral estoppel. In support of the procedural defenses, the Answer referred to a prior proceeding between the parties that also arose out of the 1979 wildcat strike at the Lordstown facility.

THE 1979 LITIGATION BETWEEN THE PARTIES

On June 11, 1979, Anchor Motor Freight brought an action in the United States District Court for the Northern District of Ohio styled *Anchor Motor Freight, Inc.* v. *Local Union 377 (IBT), et al,* Civil Action No. C-79-1181Y. As in the instant proceeding, Teamsters Local 377 was named as a Defendant and alleged to have violated the collective bargaining agreement by its conduct during the wildcat strike that commenced on June 10, 1979.

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[1] In addition to answering, Defendant Union filed a counterclaim against Anchor, alleging that Petitioner breached the collective bargaining agreement by filing suit against the Union for taking efforts to end an unauthorized work stoppage. Respondent Union further filed a third-party complaint against Teamsters for a Democratic Union and a Teamsters for a Democratic Union organizer asserting that the Third-Party Defendants were responsible for causing and continuing the strike.

The complaint in the 1979 action sought injunctive relief against the work stoppage. With the consent of Respondent Union, a temporary restraining order was issued by the [illegible] on June 14, 1979. The order, *inter alia,* enjoined Defendant Union and the individually named Defendants from engaging in the work stoppage in violation of the collective bargaining agreement.

After the order issued, Respondent Union advised its members of the order, urged their return to work, and undertook extensive efforts to end the work stoppage. Despite the issuance of a temporary restraining order, and the efforts of the Union to persuade its members to return to work, the strike continued. As a result, Anchor filed a motion to show cause why Respondent Union and certain striking Anchor employees should not be held in contempt of the Court's temporary restraining order.

The contempt charges were heard on June 15 and June 16, 1979. During the two day hearing, Anchor introduced evidence to support its charge of contempt, and the Union presented evidence demonstrating its attempts to end the work stoppage. On June 17, 1979, the Court rendered its decision. The oral opinion of Judge Thomas stated, in material part, as follows:

> "The evidence indicates that on June 12, 1979, notices were posted by one or more officers of 377 at the Lordstown terminal in conspicuous places, and further that by letters and telegrams to union members and committeemen and elected stewards, each of these persons was notified that the work stoppage was unauthorized and in violation of the no strike clause of the collective bargaining agreement.
>
> These notices and other communications also gave notice of the temporary restraining order which this Court had issued and in substance the content of it.

> It is determined that the Local took all available steps to abide by this Court's order and the contract, and to attempt to persuade the members of Local 377 to return to work immediately.
>
> Also there is no evidence that Local 377 or the officers either initiated, fostered, or in any way encouraged or supported the work stoppage."

The Court, by order dated June 18, 1979, specifically held that the Union was not in contempt, incorporated the oral opinion of the preceding day, and adopted the opinion as its findings of fact and conclusions of law pursuant to Rule 52, Federal Rules of Civil Procedure. No appeal was taken from that order.

Though contempt sanctions were imposed against individual striking employees, the work stoppage continued. On June 20, 1979, Anchor filed a second motion to show cause. After a hearing, the Court again found certain individuals in contempt of Court. Again, none of the adjudged contemnors were officers or employees of Defendant Union. Sanctions were imposed under which the leaders of the work stoppage were to be immediately incarcerated and fined unless they returned to work. With that choice, the employees returned to work and the unauthorized strike ended.

On September 20, 1979, some three (3) months after the strike ended, Petitioner Anchor filed a motion to dismiss its action against all Defendants, including Teamsters Local 377. In its brief in support of the motion, Petitioner acknowledged that the strike was not authorized by the Union, represented that there was "no longer any live controversy between the parties", and urged that the case was moot. On September 28, 1979, the Court entered its order granting Anchor's motion. While retaining jurisdiction for the purpose of enforcing its prior orders, the Court dismissed the case with prejudice at Anchor's cost.

Despite the clear findings of Judge Thomas and its representation to the Court that the controversy was moot, Anchor commenced this proceeding in January of 1981.

PROCEEDINGS BEFORE THE DISTRICT COURT

After the issues were joined, Defendant Union moved for a summary judgment dismissing Plaintiff's complaint. Relying upon the above-discussed 1979 litigation between the parties, Respondent Union argued that the Petitioner's claims were barred under the doctrines of res judicata and collateral estoppel. In addition to its procedural arguments, Respondent Union also asserted substantive reasons in support of its motion.[2]

On June 1, 1981, the District Court issued its memorandum opinion granting Respondent Union's motion for summary judgment. The Court, after examining the history of the prior proceeding, concluded that Plaintiff's claim was barred by the doctrine of res judicata. The Court also referred to the specific factual findings of Judge Thomas that the Union complied with the contract and attempted to end the strike, and held that Anchor was barred from relitigating those issues.

The merits of Anchor's claims were similarly rejected by the trial court. Upon its review of the record, the Court held that "the union attempted almost every action conceivable in an attempt to persuade the striking employees to return to work, thereby fulfilling its contractual obligation." Based on the above, the Court entered summary judgment dismissing plaintiff's complaint. The Court order also dismissed the counterclaim and the third-party complaint filed by Respondent Union.

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[2] With respect to the merits, the Union relied upon provisions of the collective bargaining agreement which stated that "the Union shall not be liable for damages resulting from such unauthorized acts of its members", or for undertaking efforts to end an unauthorized work stoppage. In addition, the Union submitted the affidavit of Dan Brott, Secretary-Treasurer and chief executive officer of the Union. The affidavit detailed the extensive efforts of the Union to end the June 1979 wildcat strike.

Judgment was entered on the opinion, and both parties filed an appeal to the United States Court of Appeals for the Sixth Circuit.

THE DECISION OF THE COURT OF APPEALS

The appellate court reversed and remanded the decision of the District Court for further proceedings. Though concluding that Petitioner's claim was not barred by res judicata, the Sixth Circuit did sustain the trial court's holding that Anchor was estopped from relitigating certain factual findings raised and determined in the course of the contempt proceedings. The Sixth Circuit explained:

> "The prior cause of action against the striking union members for violation of their no strike clause differs from the instant cause of action against the Union for violation of its agreement to immediately make every effort to persuade the unauthorized strikers to return to work. Local 377 was, however, entitled to dismissal of a portion of Anchor's claim under the closely related collateral estoppel doctrine on the basis of particularized findings of fact made by Judge Thomas in his bench opinion.
>
> The June 17 bench opinion of the District Court held in pertinent part:
>
> > 'Before proceeding to discuss and decide the central issues, I desire to make certain findings as to Local 377:
> >
> > The evidence indicates that on June 12, 1979, notices were posted by one or more officers of 377 at the Lordstown Terminal in conspicuous places, and further that by letters and telegrams to union members and committeemen and elected stewards, each of these persons was notified that the work stoppage was unauthorized and in violation of the no strike clause of the collective bargaining agreement.

> These notices and other communications also gave notice of the temporary restraining order which this Court had issued and in substance the content of ...
>
> It is determined that the Local took all available steps to abide by this Court's order and the contract, and to attempt to persuade the members of Local 377 to return to work immediately.
>
> Also there is no evidence that Local 377 or the officers either initiated, fostered, or in any way encouraged or supported the work stoppage. Indeed, I should say as an aside, I think the fact they didn't is one of the points that some of the individual defendants make as being in criticism of the actions of 377.
>
> Therefore, any request by plaintiff Anchor for a finding of contempt against Local 377 or the officers is expressly denied.'
>
> App., Vol. 4, Tab 31, 644-45 (emphasis added). Accordingly, Anchor cannot now be heard to claim that the Union failed to immediately make every effort to persuade the strikers to return to work between June 11 (the date the strike began) and June 16 (the last date of the first show cause hearing)." Appendix to Petition at pp. 5, 6, and 7.

The appellate court further held that the trial court applied the wrong legal standard in deciding the merits of Petitioner's claim, and that the counterclaim of Respondent Union was improvidently dismissed. The cause was remanded to the District Court to determine the Union's liability for that period of the wildcat strike that occurred subsequent to the contempt findings adjudicating the Union's conduct, as well as the counterclaim of Respondent Union.

REASONS FOR DENYING THE WRIT

1. The Holding Of The Court Below Is Consistent With Well Settled Supreme Court Precedent And Does Not Present Any Novel Or Significant Questions That Merit Review By This Court.

This Court has long recognized and consistently held that a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction cannot be disputed in a subsequent action between the same parties. *Cromwell* v. *County of Sac,* 94 U.S. 351 (1876), *Southern Pacific Railroad Co.* v. *United States,* 168 U.S. 1 (1897), *Commissioner of Internal Revenue* v. *Sunnen,* 333 U.S. 591 (1948),. *Sea-Land Services* v. *Gaudet,* 414 U.S. 573 (1974), *State of Montana* v. *United States,* 440 U.S. 147 (1979), and *Allen* v. *McCurry,* 449 U.S. 90 (1980). As succinctly stated by this Court in *Sunnen*: "Once a party has fought out a matter in litigation with the other party, he cannot later renew that duel." 333 U.S. at 598.

In *State of Montana* v. *United States, supra,* this Court discussed the well-settled and time-honored doctrine of collateral estoppel, and emphasized the vital policy interests served by estopping parties from relitigating issues decided by a court of competent jurisdiction in a prior proceeding.

> "A fundamental precept of common-law adjudication, embodied in the related doctrines of collateral estoppel and res judicata, is that a 'right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction...cannot be disputed in a subsequent suit between the same parties or their privies...' *Southern Pacific R. Co.* v. *United States,* 168 U.S. 1, 48-49 (1897).
>
> * * *
>
> Under collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits

based on a different cause of action involving a party to the prior litigation. *Parklane Hosiery Co.* v. *Shore,* 439 U.S. 322, 326 n. 5, (1979); Scott, Collateral Estoppel by Judgment, 56 Harv. L. Rev. 1, 2-3 (1942); Restatement (Second) of Judgments Section 68 (Tent Draft No. 4, Apr. 15, 1977) (issue preclusion). Application of [res judicata and collateral estoppel] is central to the purpose for which civil courts have been established, the conclusive resolution of disputes within their jurisdictions. *Southern Pacific R. Co., supra,* at 49, *Hart Steel Co.* v. *Railroad Supply Co.,* 244 U.S. 294, 299 (1917)." 440 U.S. at 153.

Though of ancient lineage, this Court has recently emphasized the value of collateral estoppel. In *Allen* v. *McCurry, supra,* this Court discussed res judicata and collateral estoppel and observed:

"In recent years, this Court has reaffirmed the benefits of collateral estoppel in particular, finding the policies underlying it to apply in contexts not formerly recognized at common law." 449 U.S. at 94.

And, the past term, this Court repeated:

"...a fundamental precept of common-law adjudcation is that an issue once determined by a competent court is conclusive. *Montana* v. *United States,* 440 U.S. 147, 153, 59 L. Ed. 2d 210, 99 S. Ct. 970 (1979); *Federated Dept. Stores, Inc.* v. *Moitie,* 452 U.S. 394, 398, 69 L. Ed. 2d 103, 101 S. Ct. 2424 (1981); *Cromwell* v. *County of Sac,* 94 U.S. 351, 352-353, 24 L. Ed 195 (1877). 'To preclude parties from contesting matters that they have had a full and fair opportunity to litigate protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions.' *Montana* v. *United States, supra,* at 153-154, 59 L. Ed. 2d 210, 99 S. Ct. 970." *State of Arizona* v. *State of California,* — U.S. —, 75 L. Ed. 2d 318, 333 (1983).

The decisions of this Court plainly preclude a party from relitigating factual disputes that were put in issue and decided in a prior proceeding.

The court below properly applied the doctrine of collateral estoppel and barred Petitioner from relitigating the Union's conduct during the work stoppage. Judge Thomas, after a full evidentiary hearing, found as a matter of fact that "the Local took all available steps to abide by this Court's order and the contract, and to attempt to persuade the members of Local 377 to return to work immediately." The appellate court quite properly held that Petitioner was foreclosed from relitigating that issue. The holding of the reviewing court is squarely in concert with the opinions of this Court and should not be disturbed.

Though collateral estoppel is not used to foreclose an arbitration proceeding, or to bind an arbitrator to the factual findings of the District Court, Petitioner nonetheless contends that according Judge Thomas' finding collateral estoppel effect would somehow subvert the arbitral process.[3] The issue framed by Petitoner is simply not presented on this record. Despite Petitioner's labors to manufacture a reviewable issue, the appellate court decision does not interfere with or dilute the arbitral process.

Petitioner's argument might have some surface appeal if raised during an arbitration proceeding to support a claim that an arbitrator should not be bound by a court judgment. It is not remotely persuasive, however, where asserted during a second court proceeding for the purpose of allowing relitigation of an

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[3]Petitioner favors the Court with a lengthy discourse on the value of arbitration. Respondent Union, of course, does not dispute the conclusion that arbitration is the favored method of resolving labor disputes, or quarrel with the authorities cited in support of that proposition. However, the policy arguments are simply irrelevant since the lower court's holding in no way impedes the arbitral process.

issue already decided by that very court. To restrict Anchor to a single district court resolution of the Union's conduct during the wildcat strike would not impact adversely upon the arbitral process or otherwise offend any public policy interest.

To the contrary, Anchor's attempts to obtain the proverbial second bite of the apple undermines the very foundation for collateral estoppel. This Court, in *Parklane Hosiery Co., Inc.* v. *Shore,* 439 U.S. 322 (1979), explained:

> "Collateral estoppel, like the related doctrine of res judicata, has the dual purpose of protecting litigants from the burden of relitigating an identical issue with the same party or his privy and of promoting judicial economy by preventing needless litigation." 439 U.S. at 326.

No sound reason is present to subject the Union to a retrial duplicating claims once rejected and presenting issues already decided. Anchor, like other litigants, is bound by settled concepts of collateral estoppel and cannot avoid the operation of that doctrine by asserting some imagined public policy interest.

In rejecting claimed public policy reasons for avoiding res judicata, this Court pointedly observed:

> "The Court of Appeals' reliance on 'public policy' is similarly misplaced. This court has long recognized that '[p]ublic policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties.' *Baldwin* v. *Traveling Men's Assn.,* 283 U.S. 522, 525, 75 L. Ed. 1244, 51 S. Ct. 517 (1931)." *Federated Department Stores, Inc.* v. *Moitie,* 452 U.S. 394, at 401 (1981).

Here, too, considerations of public policy fully support the application of collateral estoppel, and review of the holding below is simply not required.

The remaining arguments asserted in the Petition can be summarily considered. Petitioner argues that the issues for which preclusion is sought were not actually litigated. The claim is frivolous. The Union was required to present evidence to absolve itself from the contempt charges. The evidence presented did detail the efforts of the Union to end the strike, and upon that evidence Judge Thomas properly concluded that the Union took all available steps to end the work stoppage. Those issues were, in fact, litigated, and Anchor's unsubstantiated claim to the contrary should be rejected.

Similarly meritless is Petitioner's argument that the finding was not necessary to the Court's judgment. Anchor filed contempt charges thereby squarely placing at issue the Union's conduct during the strike. The Court's order required the Union to abide by the contract. In concluding that the Union was not in contempt of its orders since it had not breached the contract and had attempted to end the strike, Judge Thomas was properly deciding issues before him.

Petitioner simply cannot avoid the factual findings of Judge Thomas. Indeed, though seeking to disassociate itself from those findings, it must be recalled that it was Petitioner that filed the injunction proceeding against Respondent Union, sought and obtained the preliminary injunction, filed contempt charges against Respondent Union for allegedly violating the injunction, and introduced evidence to support the charge of contempt. Having sought a judicial declaration from Judge Thomas concerning the conduct of the Union from the inception of the wildcat strike to the contempt hearing, Petitioner's argument to this Court that those findings should be disregarded and ignored should be summarily rejected.

Accordingly, the Court below properly applied the doctrine of collateral estoppel and foreclosed Petitioner from relitigating factual questions that have been put in issue and decided. Despite Petitioner's strained efforts to create a reviewable issue by injecting irrelevant arguments, review is clearly not merited.

CONCLUSION

For the foregoing reasons the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of July, 1983, three copies of the foregoing Brief for Respondent In Opposition were mailed by regular U.S. Mail, postage prepaid, to William W. Allport, David R. Knowles and Audrey P. Forrest, 3700 Park East Drive, Cleveland, Ohio 44122, Attorneys for Petitioner, and Ellis Boal, 925 Ford Building, Detroit, Michigan 48226, Attorney for Teamsters for a Democratic Union, and Stephen Kindred, 18675 Bretton, Detroit, Michigan 48201.

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